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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,871	11/24/2000	Kenneth B. Higgins	5113	4059

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04/05/2006

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

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0406

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Commissioner for Patents

Applicant filed a Response to the Notice of Improper Request for Continued Examination (RCE) on March 16, 2006. In said Response, applicant asserts an Information Disclosure Statement (IDS) is a proper submission according to MPEP 706.07(h). While this may be true in some circumstances, MPEP 706.07(h), section II states the following:

II. SUBMISSION REQUIREMENT

A "submission" as used in 37 CFR 1.114 includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. See 37 CFR 1.114(c). If a reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of 37 CFR 1.111. See 37 CFR 1.114(c). Thus, an applicant may file a submission under 37 CFR 1.114 containing only an information disclosure statement (37 CFR 1.97 and 1.98) in an application subject to a notice of allowance under 35 U.S.C. 151, but not in an application where the last Office action is a final rejection or an Office action under *Ex parte* Quayle, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935), or in an application that is under appeal. A request for a suspension of action, an appeal brief or a reply brief (or related papers) will not be considered a submission under 37 CFR 1.114. See 37 CFR 1.103 and 1.114(d). The submission, however, may consist of the arguments in a previously filed appeal brief or reply brief, or may simply consist of a statement that incorporates by reference the arguments in a previously filed appeal brief or reply brief. In addition, a previously filed amendment after final (whether or not entered) may satisfy this submission requirement. Arguments submitted after final rejection, which were entered by the examiner but not found persuasive, may satisfy the submission requirement if such arguments are responsive within the meaning of 37 CFR 1.111 to the Office action. Consideration of whether any submission is responsive within the meaning of 37 CFR 1.111 to the last outstanding Office action is done without factoring in the "final" status of such outstanding Office action. Thus, a reply which might not be acceptable as a reply under 37 CFR 1.113 when the application is under a final rejection may be acceptable as a reply under 37 CFR 1.111.

Thus, applicant's submission of an IDS, after a Final Rejection, is improper since applicant has not complied with 37 CFR 1.111 (response to the Final Rejection).

CHERYL A. JUSKA
PRIMARY EXAMINER
Cheryl Juska
Primary Examiner
Art Unit: 1771